

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action No. 06-27-GMS
)	
ANDREW N. YAO,)	
)	
Defendant.)	

**UNITED STATES' MOTION TO DISMISS WITHOUT PREJUDICE
COUNTS 1-12 OF THE INDICTMENT**

NOW COMES the United States of America, by and through Colm F. Connolly, United States Attorney for the District of Delaware, and Shannon Thee Hanson and Douglas E. McCann, Assistant United States Attorneys for the District of Delaware, and, pursuant to Federal Rule of Criminal Procedure 48(a), hereby moves to dismiss without prejudice Counts 1-12 of the Indictment against the defendant in the above-captioned case and in support states as follows:

(1) On March 28, 2006, the grand jury returned a fourteen (14) count indictment against defendant Andrew Yao, charging him with mail, wire and bankruptcy fraud, false statements to a bank, and illegal monetary transactions. Docket Item ("D.I.") 2.

(2) On October 13, 2006, the defendant filed motions and supporting memoranda to dismiss Counts 1-12 of the Indictment. D.I. 16 & 17. On November 9, 2006, government counsel wrote to the Court (copying defense counsel) indicating that it would dismiss Counts 1-12 of the Indictment, with the intention of prosecuting these charges against defendant Yao in the Eastern District of Pennsylvania. D.I. 19. Because no motions were filed with respect to Counts


13 and 14, those Counts were tried before a jury in the District of Delaware on March 12-14, 2007. The defendant was convicted on both counts. D.I. 45.¹

(3) The government is now ready to proceed with the remaining charges in the Eastern District of Pennsylvania. Accordingly, and pursuant to Federal Rule of Procedure 48(a), the government respectfully requests that the Court dismiss Counts 1-12 of the above-captioned Indictment, without prejudice.

WHEREFORE, the government respectfully requests that its Motion to Dismiss Without Prejudice Counts 1-12 of the Indictment in the above-captioned case be granted. A proposed Order is attached.

Respectfully submitted,

COLM F. CONNOLLY
United States Attorney

By: 
Shannon Thee Hanson
Douglas E. McCann
Assistant United States Attorneys

Dated: May 15, 2007

¹ To avoid prejudice to the defendant, Counts 13 and 14 were referred to as Counts 1 and 2 on the Jury Verdict form. The jury did not hear testimony about Counts 1 and 2 of the Indictment; rather, all evidence was limited to proving Counts 13 and 14, two counts of making a false oath or account in connection with a bankruptcy proceeding in violation of 18 U.S.C. § 152(2).

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ORDER

IT IS HEREBY ORDERED this ____ day of May, 2007, that, pursuant to Federal Rule of Criminal Procedure 48(a), the Government's Motion to Dismiss Without Prejudice Counts 1-12 of the Indictment is GRANTED, for the reasons stated in the government's motion.

Honorable Gregory M. Sleet
United States District Judge

CERTIFICATE OF SERVICE

I, Shannon Thee Hanson, hereby certify that I caused a copy of the UNITED STATES' MOTION TO DISMISS WITHOUT PREJUDICE COUNTS 1-12 OF THE INDICTMENT to be served this 15th day of May, 2007, on the following counsel in the manner indicated:

BY FACSIMILE and BY FIRST CLASS MAIL

Brian McMonagle, Esquire
One Penn Square West, Suite 701
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215-981-0977


Shannon Thee Hanson